

SUPPLEMENTARY PROTOCOL TO THE 1970 TAX
CONVENTION WITH BELGIUM

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE SUPPLEMENTARY PROTOCOL, TOGETHER WITH A RELATED EXCHANGE OF NOTES, SIGNED AT WASHINGTON ON DECEMBER 31, 1987, MODIFYING AND SUPPLEMENTING THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT BRUSSELS ON JULY 9, 1970



MARCH 1, 1988.—Protocol was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *February 29, 1988.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Supplementary Protocol Modifying and Supplementing the Convention between the United States of America and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related exchange of notes. The Supplementary Protocol and the exchange of notes were signed at Washington on December 31, 1987. I also transmit for the information of the Senate the report of the Department of State with respect to the Protocol.

Pending the successful conclusion of a comprehensive new income tax convention, the Supplementary Protocol will make certain improvements in the existing convention intended to promote the development of economic relations between the United States and Belgium.

It is most desirable that this Protocol be considered by the Senate as soon as possible and that the Senate give advice and consent to ratification.

RONALD REAGAN.



LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, February 2, 1988.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, a Supplementary Protocol Modifying and Supplementing the Convention between the United States of America and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related exchange of notes. The Supplementary Protocol and the exchange of notes were signed at Washington on December 31, 1987.

The Convention needs to be modified to reflect changes in the tax laws and treaty policies of the United States and Belgium since it was concluded in 1970. Pending the successful conclusion of a comprehensive new convention, Department of the Treasury negotiators have concluded a limited Protocol addressing an issue of immediate concern to United States investors.

The Protocol will reduce the tax at source on direct investment dividends from 15 percent to 5 percent, effective January 1, 1988. This will be beneficial to many United States businesses which, especially after the Tax Reform Act of 1986, have large excess foreign tax credits with respect to their foreign income. The Protocol will also provide rules to ensure that the reduced rates of tax provided in the Convention, as amended by the Protocol, are enjoyed only by residents of the two countries and do not become the object of "treaty shopping" by others.

The exchange of notes confirms that the French and Dutch texts of the new Article 12A incorporate the meaning of the English language term "beneficial interest."

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A technical memorandum explaining in detail the provisions of the Supplementary Protocol is being prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Supplementary Protocol. It has the approval of both Departments.

Respectfully submitted,

GEORGE P. SHULTZ.

SUPPLEMENTARY PROTOCOL MODIFYING AND SUPPLEMENTING THE
CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE
KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES
ON INCOME, SIGNED AT BRUSSELS ON JULY 9, 1970

The Government of the United States of America and the Government of the Kingdom of Belgium, desiring to promote the development of the economic relations between the United States of America and the Kingdom of Belgium,

Considering that, in the course of the ongoing negotiations of a new convention between both countries, it is desirable to remove certain constraints to such development before the successful conclusion of the new convention,

Have decided to conclude a supplementary Protocol to the Convention between the United States of America and the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Brussels on July 9, 1970 (hereafter "the Convention") and

Have agreed upon the following articles:

ARTICLE 1

The text of Article 10 (Dividends) of the Convention is suspended and replaced by the following:

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which owns directly at least 10 percent of the voting stock of the company paying the dividends;

(b) 15 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. This term also includes income—even if

paid in the form of interest—which is taxable as income from capital invested by the members of a company, other than a company with share capital, which is a resident of Belgium.

4. The provisions (1) and (2) shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid forms part of the assets of such permanent establishment of fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State pays dividends, the other Contracting State may not impose any tax on the dividends paid by that company to a resident of the first-mentioned State, except insofar as the holding in respect of which the dividends are paid forms part of the assets of a permanent establishment or a fixed base situated in that other State.

6. For the purpose of paragraph (4) and notwithstanding any other provision of the Convention, dividends paid by company which is a resident of Belgium in respect of a holding which forms part of the assets of a permanent establishment situated in Belgium, may be taxed separately in accordance with Belgian law.

ARTICLE 2

In paragraph (5) of Article 11 (Interest) of the Convention, the words "paragraph (3) of Article 10 (Dividends)" shall be substituted for the words "paragraph (2) of Article 10 (Dividends)".

ARTICLE 3

The following Article is inserted in the Convention between Article 12 (Royalties) and Article 13 (Capital Gains):

ARTICLE 12A

(Limitation on Benefits)

1. A person (other than an individual) which is a resident of a Contracting State and derives dividends, interest or royalties from the other Contracting State shall not be entitled under Articles 10 (Dividends), 11 (Interest) or 12 (Royalties) to relief from taxation in that other Contracting State unless:

(a) both of the following conditions are satisfied:

(i) more than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by one or more individual residents of one of the Contracting States, one of the Contracting States or its political subdivisions or local authorities, or citizens of the United States; and

(ii) more than 50 percent of the gross income of such person is not used, directly or indirectly, to meet liabilities

for interest or royalties to persons who are not residents of one of the Contracting States, one of the Contracting States or its political subdivisions or local authorities, or citizens of the United States; or

(b) the dividends, interest or royalties derived from the other Contracting State are derived in connection with, or are incidental to, the active conduct by such person of a trade or business in the first-mentioned State (other than a business the principal activities of which are making or managing investments in the other Contracting State); or

(c) the person deriving the dividends, interest or royalties is a resident of a Contracting State either in whose principal class of shares there is substantial and regular trading on a recognized securities exchange, or more than 50 percent of whose shares of each class is owned by a resident of that Contracting State in whose principal class of shares there is such substantial and regular trading on a recognized securities exchange.

2. For purposes of subparagraph (1)(a)(ii), the term "gross income" means:

(a) in the case of the United States, gross income as defined under the Internal Revenue Code of 1986, as may be amended from time to time, without regard to the geographic source of the income.

(b) in the case of Belgium, gross receipts, or where an enterprise is engaged in a business which includes the manufacture or production of goods, gross receipts reduced by the direct costs of labor and materials attributable to such manufacture or production and paid or payable out of such receipts.

3. For purposes of subparagraph (1)(c), the term "recognized securities exchange" means:

(a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934;

(b) the Belgian stock exchanges; and

(c) any other securities exchange agreed upon by the competent authorities of the Contracting States."

ARTICLE 4

1. This supplementary Protocol, which shall form an integral part of the Convention signed at Brussels on July 9, 1970, shall be ratified and the instruments of ratification shall be exchanged at Brussels as soon as possible.

2. This supplementary Protocol shall enter into force on the fifteenth day after the date of the exchange of the instruments of ratifications and its provisions shall have effect with respect to dividends, interest and royalties credited or paid on or after January 1, 1988.

ARTICLE 5

This supplementary Protocol shall remain in force as long as the Convention's in effect and in the event of termination of such Convention shall terminate simultaneously with such Convention. However, either Contracting State may terminate separately this supplementary Protocol, through diplomatic channels, by giving to the other Contracting State at least six months' written notice of termination at any time after five years from the day on which it enters into force. In such event, the supplementary Protocol shall cease to have effect with respect to dividends, interest and royalties credited or paid on or after the first day of January 1 next following the expiration of the six-month period and the provisions of the Convention, as effective on December 31, 1987, shall have effect with respect to such amounts.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this supplementary Protocol.

DONE at Washington in duplicate, in the English, French and Dutch languages, the three texts being equally authentic, this 31st date of December, 1987.

For the Government of United States of America:

WILLIAM BODDE, Jr.

For the Government of The Kingdom of Belgium:

HERMAN DEHENNIN.

DEPARTMENT OF STATE,

Washington, December 31, 1987.

His Excellency HERMAN DEHENNIN,
Ambassador of Belgium.

EXCELLENCY: I have the honor to refer to the Supplementary Protocol Modifying and Supplementing the Convention between the Government of the United States of America and the Government of the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion, signed at Brussels on July 9, 1970. The Protocol has been signed at Washington on this date. During the course of the discussions regarding the Protocol, one question arose with respect to which it was deemed appropriate to exchange Notes recording the agreement reached by the delegations from our two countries.

Article 3 of the Protocol adds a new Article 12A to the Convention, which provides that, unless certain alternative conditions are satisfied, a person (other than an individual) which is a resident of a Contracting State and derives dividends, interest, or royalties from the other Contracting State shall not be entitled under the Dividends, Interest, and Royalties Articles of the Convention to relief from taxation in the other Contracting State unless (in the language of the English text of the Protocol) more than 50 percent of the "beneficial interest" in such person is owned by one or more individual residents of one of the Contracting States, one of the Contracting States or its political subdivisions or local authorities, or citizens of the United States (hereinafter "listed persons").

The delegations agreed that the French and Dutch language texts of the new Article 12A incorporate the meaning of the English language term "beneficial interest." Specifically, for the condition in the preceding paragraph to be satisfied, more than 50 percent of the rights to income and other economic rights in the person claiming treaty benefits must be owned by one or more of the listed persons. In the case of a trust claiming treaty benefits, for example, more than 50 percent of the interests held by beneficiaries of the trust must be held by listed persons for the condition to be satisfied; the identities of the legal owners of the trust are irrelevant for this purpose.

If this is in accord with your understanding, I would appreciate a confirmation from you to this effect.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

WILLIAM BODDE, Jr.

EMBASSY OF BELGIUM,

Washington, DC, December 31, 1987.

His Excellency GEORGE P. SHULTZ,
Secretary of State, Washington.

EXCELLENCY: I have the honour to acknowledge the receipt of Your Excellency's note of today's date which reads as follows:

EXCELLENCY: I have the honour to refer to the Supplementary Protocol Modifying and Supplementing the Convention between the Government of the United States of America and the Government of the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion, signed at Brussels on July 9, 1970. The Protocol has been signed at Washington on this date. During the course of the discussions regarding the Protocol, one question arose with respect to which it was deemed appropriate to exchange Notes recording the agreement reached by the delegations from our two countries.

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The delegations agreed that the French and Dutch language texts of the new Article 12A incorporate the meaning of the English language term "beneficial interest."

Specifically, for the condition in the preceding paragraph to be satisfied, more than 50 percent of the rights to income and other economic rights in the person claiming treaty benefits must be owned by one or more of the listed persons. In the case of a trust claiming treaty benefits, for example, more than 50 percent of the interests held by beneficiaries of the trust must be held by listed persons for the condition to be satisfied; the identities of the legal owners of the trust are irrelevant for this purpose.

If this is in accord with your understanding, I would appreciate a confirmation from you to this effect.

Accept, Excellency, the renewed assurances of my highest consideration.

I confirm this understanding on behalf of the Government of the Kingdom of Belgium.

I take the opportunity to renew to Your Excellency the assurances of my highest consideration.

HERMAN DEHENNIN,
Ambassador of Belgium.

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